

FISCAL NOTE

HB 662 - SB 841

March 20, 2007

SUMMARY OF BILL: Increases the penalty for the offense of rape of a child from a Class A felony with a maximum sentence of 60 years to a capital offense punishable by death, life imprisonment, or life without parole.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$15,601,100 / Incarceration*
\$244,600 Recurring
\$18,900 One-Time

Other Fiscal Impact – It is estimated that an average of one offender per year will receive a death sentence. If a death sentence offender serves an average of 20 years before the sentence is carried out, there will be no significant additional incarceration costs for the death-sentenced offender, apart from the cost of the execution. The cost of executing each inmate will exceed \$15,000. The cost to the state of trials and appeals from death-sentenced offenders is substantially higher than for other cases. It is estimated that the additional cost of trials and appeals from death sentences will exceed \$750,000 for each case.

Assumptions:

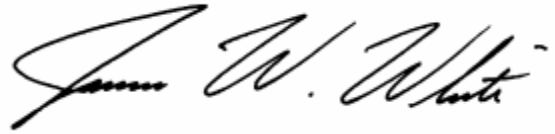
- An average of 65 persons have been convicted of this offense in each of the past five years, according to the Administrative Office of the Courts (61), and the Department of Correction (DOC) (70). The average age of each offender is 39 years, and the life expectancy of each offender is 70 years.
- Persons of this offense currently serve an average of 20 years. One of the 65 offenders will receive a death sentence. Each non-death sentenced offender will serve an average of 31 years.
- According to the U.S. Census Bureau, population growth in Tennessee has averaged 1.09 percent per year for the past ten years.
- Sixty-four persons will be convicted for the offense of rape of a child in the first year and will receive a non-death sentence. Population growth of 1.09 percent per year will result in seven additional offenders serving additional time in the tenth year after the sentence increase is added to time currently served. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based upon 71 offenders serving additional time on their sentences.

- Seventy-one offenders will serve an additional 11 years (an increase from 20 years to 31 years). According to DOC, the average operating cost per inmate per day for calendar year 2007 is \$60.16. The cost per inmate at 20 years is \$439,468.80 (\$60.16 x 7,305 days). The cost per inmate at 31 years is \$681,176.64 (\$60.16 x 11,322.75 days). The cost per inmate in the tenth year is \$219,734.40 (\$60.16 x 3,652.50). The total additional operating cost for 71 offenders in the tenth year is \$15,601,142.40 (\$219,734.40 x 71).
- Currently those offenders convicted of rape of a child are classified as a “child rapist” and are required to serve 100% of their sentence. Imprisonment for life will be a lesser sentence for “aggravated rape of a child” than for “rape of a child” because an offender convicted of “aggravated rape of a child” would be eligible to receive sentence credits.
- Public defenders and district attorneys general will require additional resources for trial and appeal of additional death and life without parole cases. Supreme Court rules require appointment of two defense attorneys in each death penalty case, and specialized training. Reimbursement rates for appointed defense counsel are higher in death cases. Attorneys handling death cases are subject to greater limitations on their caseloads, requiring additional attorneys to handle other cases.
- Recurring costs of \$244,600 reflect two additional assistant public defender positions and one assistant district attorney position including salaries, benefits, and other related costs. One-time costs of \$18,900 reflect the computer equipment furniture, and other related costs.
- Tennessee has executed two inmates in the past 47 years. One execution occurred in 2000, at a cost in excess of \$11,000. The second execution occurred in 2006, at a cost in excess of \$15,000.
- The state incurs substantial out-of-pocket expenses in death-sentence trials and appeals. These include costs of appointed attorneys, expert witnesses, investigation, and related matters. These additional costs are estimated to exceed \$750,000 in each case.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large, stylized "J" and "W".

James W. White, Executive Director